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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

JERMONTA R. CUMMINGS,

Case No. [22-cv-02385-LB](#)

Petitioner,

v.

LUIS MARTINEZ,

ORDER TO SHOW CAUSE

Respondent.

INTRODUCTION

Jermonata Cummings, an inmate at the Correctional Training Facility in Soledad, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He paid the filing fee and consented to proceed before a magistrate judge. (ECF Nos. 1, 4.)¹ His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. This order requires the respondent to respond to the petition.

¹ Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

STATEMENT

Mr. Cummings provides the following information in his habeas petition and attachments thereto. Following a jury trial, he was convicted in Alameda County Superior Court of mayhem. (ECF No. 1 at 2.) On January 3, 2020, he was sentenced to nineteen years in state prison. (*Id.*)

Mr. Cummings appealed. In 2020, the California Court of Appeal affirmed the sentence. In 2022, the California Supreme Court denied his petition for review. (*Id.* at 3.)

ANALYSIS

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court considering an application for a writ of habeas corpus shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

The federal petition for writ of habeas corpus alleges that Mr. Cummings’ due process rights and right to a fair trial were violated when in a bifurcated proceeding, the jury was unable to reach a determination as to the prior strike conviction allegation, so a mistrial was declared and then the trial court over his objection empaneled a new jury that found the alleged prior strike conviction to be true. Liberally construed, this claim is cognizable in a federal habeas action and warrants a response.

CONCLUSION

For the foregoing reasons,

1. The petition warrants a response.

2. The clerk shall electronically serve a copy of this order and a Magistrate Judge Jurisdiction Consent Form upon the respondent and the respondent’s attorney, the Attorney General of the State of California, at the following email address: SFAWTParalegals@doj.ca.gov. The petition and any exhibits thereto are available via the ECF system for the Northern District of California. The clerk also shall serve by mail a copy of this order on the petitioner.

1 3. The respondent must file and serve upon the petitioner, on or before **July 18, 2022**, an
2 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing
3 cause why a writ of habeas corpus should not be issued. The respondent must file with the answer
4 a copy of all portions of the court proceedings that have been previously transcribed and that are
5 relevant to a determination of the issues presented by the petitioner.

6 4. If the petitioner wishes to respond to the answer, he must do so by filing a traverse with the
7 court and serving it on the respondent on or before **August 29, 2022**.

8 5. The petitioner is responsible for prosecuting this case. The petitioner must promptly keep
9 the court informed of any change of address and must comply with the court's orders in a timely
10 fashion. The petitioner is cautioned that he must include the case name and case number for this
11 case on the first page of any document he submits to the court for consideration in this case.

12 **IT IS SO ORDERED.**

13 Dated: May 3, 2022



14
15 LAUREL BEELER
16 United States Magistrate Judge